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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68898; File No. SR-NYSEArca-2013-11)

February 11, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Fee Schedule to Introduce a New Electronic Customer Rate for Certain Executions that Take Liquidity

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 29, 2013, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (the “Fee Schedule”) to introduce a new electronic Customer rate for certain executions that take liquidity. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Exchange's Fee Schedule to introduce a new electronic Customer rate of \$0.67 per contract for executions that take liquidity in a non-Penny Pilot class from the trading interest of a Lead Market Maker ("LMM"), if the OTP Holder or OTP Firm entering the Customer's order satisfies certain volume thresholds. The Exchange proposes to implement the fee changes on February 1, 2013.

An electronic Customer execution in a non-Penny Pilot class is currently subject to a take fee of \$0.79 per contract. Unlike an execution in a Penny Pilot class, the rate for an electronic execution in a non-Penny Pilot class is not currently dependent on the account type of the counterparty. The Exchange proposes to introduce a new electronic Customer take rate of \$0.67 per contract for executions that take liquidity in a non-Penny Pilot class from the trading interest of an LMM (including orders and quotes) if the OTP Holder or OTP Firm entering the Customer's order, during the month, (i) transacts an average daily volume ("ADV") on the Exchange of at least 15,000 contracts from electronic Customer orders that take liquidity in non-Penny Pilot classes or (ii) transacts a

combined ADV on the Exchange of at least 30,000 contracts in non-Penny Pilot classes from electronic Customer orders that take liquidity and affiliated electronic Market Maker orders and quotes that post liquidity in non-Penny Pilot classes.<sup>4</sup>

The Exchange believes that the proposed rate, which would only apply to the Customer side of an execution that takes liquidity against trading interest of an LMM, will incent additional posted liquidity at the NBBO by LMMs as well as additional Customer orders being sent to the Exchange for execution.

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that Customers, LMMs, OTP Holders or OTP Firms would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because the proposed rate, which would only apply to the Customer side of an execution that takes liquidity against trading interest of an LMM, will incent additional posted liquidity at the

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<sup>4</sup> For purposes of calculating ADV for the qualification, the Take Liquidity threshold does not include orders that are routed to other exchanges for execution at the National Best Bid and Offer (“NBBO”); Post or Take Liquidity calculations do not include volume from Electronic Complex Orders.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

NBBO by LMMs as well as additional Customer orders being sent to the Exchange for execution. First, the proposed lower Customer rate would incent an OTP Holder or OTP Firm to send additional Customer orders to the Exchange because its customers' transaction costs could be decreased. Second, an OTP Holder or OTP Firm that is affiliated with an LMM on the Exchange would be incented to send additional Customer order flow to the Exchange for execution in order to increase the likelihood that its LMM will interact with those orders. Third, and building on the two points above, an LMM would be incented to post additional liquidity at the NBBO, thereby rendering a Customer order that executes against the LMM's trading interest a taker of liquidity and eligible for the lower Customer take rate.

The Exchange believes that the proposed new rate and related thresholds are reasonable because they are set at levels that will encourage OTP Holders and OTP Firms to send additional Customer orders to the Exchange. Further, the Exchange believes that the proposed thresholds are reasonable because, despite being set at levels that OTP Holders and OTP Firms do not currently satisfy, the Exchange believes they are achievable for OTP Holders and OTP Firms that send Customer orders to the Exchange, whether they are OTP Holders and OTP Firms that predominantly send Customer orders to the Exchange or OTP Holders and OTP Firms that are affiliated with a Market Maker on the Exchange.

The Exchange believes that the proposed new rate is equitable and not unfairly discriminatory because it will be available to all OTP Holders and OTP Firms that transact electronic Customer orders on the Exchange, on an equal and non-discriminatory basis.

The Exchange further believes that it is equitable and not unfairly discriminatory to generally charge a lower fee to Customers, as compared to non-Customers, because Customers are less sophisticated than non-Customers and the proposed change is intended to attract a higher level of Customer order flow to the Exchange, which benefits both Customers and non-Customers. In this regard, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because the lower Customer take rate would incent OTP Holders and OTP Firms to send additional Customer order flow to the Exchange for execution, which would benefit the quality of the Exchange's market and, in turn, be beneficial to all market participants. Accordingly, the proposed new Customer take rate would be reasonably related to the value to the Exchange's market quality associated with higher volumes in Customer order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. In this regard, and for the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment and would permit the Exchange's pricing for electronic Customer executions in non-Penny Pilot classes that take liquidity while executing against LMMs to remain competitive with pricing applicable on other option exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>9</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form

(<http://www.sec.gov/rules/sro.shtml>); or

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2013-11 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2013-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at NYSE's principal office and on its Internet website at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2013-11, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).